IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA97/2021
[2023] NZCA 249

BETWEEN	MICHAEL PETER WRIGHT Appellant
AND	THE KING Respondent

Hearing: 3 May 2023

Court: Gilbert, Thomas and Woolford JJ

Counsel: X Wane and A O Belloir-Spense for Appellant
Z A Fuhr for Respondent

Judgment: 19 June 2023 at 2 pm

JUDGMENT OF THE COURT

The appeal against sentence is dismissed.

REASONS OF THE COURT

(Given by Woolford J)

[1] On 2 July 2020, Michael Peter Wright pleaded guilty to three representative charges of supplying methamphetamine, possession of methamphetamine for supply, and offering to supply methamphetamine, all over an eight-and-a-half-month period between 13 March 2017 and 1 December 2017, and one representative charge of threatening to kill his partner, again over the same time period.

[2] Mr Wright disputed the amount of methamphetamine alleged to have been supplied (in excess of two kilograms) in a disputed facts hearing held on 30 November

2020. Judge Mabey KC concluded on the basis of the evidence then called that Mr Wright had supplied a total of 2.4 kilograms of methamphetamine over the eight-and-a-half-month period.

[3] Mr Wright was accordingly sentenced on that basis on 5 February 2021 to 13 years' imprisonment.[1] He now appeals against sentence on the basis that it is manifestly excessive.

Summary of facts

[4] In August 2017, the Police National Organised Crime Group commenced an investigation into drug dealing by members and associates of the Kawerau Mongrel Mob.

[5] Initially, call data was obtained and text messaging analysed. Police obtained data in respect of two mobile phone numbers used by the appellant, the earliest of which dated back to 13 March 2017. It was evident from an analysis of the call data that the appellant was heavily involved in supplying methamphetamine.

[6] Then, over a period of four months in late 2017 and early 2018, the High Court at Auckland granted police surveillance device warrants valid for 60 days. These authorised the interception of telephone conversations, the tracking of vehicles and the use of visual surveillance devices in respect of a number of persons, including the appellant.

[7] It was established that the appellant, together with others, was running a drug dealing "shop" at his home address in Kawerau. Police set up a covert camera at the appellant's address which recorded persons coming and going from the address at all times of the day and night to purchase methamphetamine from him and his associates. During a period of just over two months, police were able to observe that, on average, more than 10 persons a day were visiting the appellant's address to purchase methamphetamine.

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1 *R v Wright* [2021] NZDC 2017 [Sentencing notes].

[8] Intercepted communications also revealed that the appellant and others on his behalf were sourcing methamphetamine from a number of different suppliers. The appellant would source methamphetamine in amounts ranging from grams to an ounce (28 grams), which he would then arrange to break down into smaller amounts ranging from a point (0.1 gram) to a gram for on-sale.

[9] In a text message in September 2017 between the appellant and Nonho Tuhaka, a person known to be one of the appellant's methamphetamine suppliers, Mr Tuhaka asked the appellant how his "shop" was getting on and how long it took him and his associates to sell one ounce of methamphetamine. The appellant replied two to three days.

[10] The police then calculated for the period from 13 March 2017 to 1 December 2017, at which point the police ceased intercepting the appellant's telephone calls, that the appellant and his associates had sold around 86 ounces of methamphetamine (the equivalent of 2.4 kilograms) from the appellant's address.

[11] The summary of facts also set out a number of examples of the appellant's text messaging, which clearly indicated the extensive nature of his drug dealing.

District Court sentence

[12] After noting the charges and referring to the disputed facts hearing, Judge Mabey placed the appellant's methamphetamine offending in band 5 of the guideline decision of *Zhang v R*.[2] Based on the quantum of 2.4 kilograms, which the Judge concluded the appellant had supplied over the relevant period, and the appellant's leading role in the drug dealing operation, the Judge adopted a starting point of 15 years' imprisonment.[3]

[13] The Judge said of the appellant's role:[4]

> …There is no doubt that the shop [in] Kawerau was a significant retail source of methamphetamine into the community.

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2 *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648.
3 Sentencing notes, above n 1, at [5] and [10]–[11].
4 At [10].

The appellant dealt with multiple wholesale suppliers and "was in charge of the prolific distribution of methamphetamine to all-comers and did so for profit.[5]"

[14] As to mitigating factors, the Judge adopted a 10 per cent discount for the appellant's guilty pleas. The Judge did not consider the appellant's pleas represented a full recognition of guilt as they were "followed by an attempt to limit liability [with respect to quantum] in an unrealistic and completely untenable way".[6]

[15] The Judge also rejected the appellant's contention that he had a "raging addiction", finding that there was no evidence of such.[7] He also declined to give credit for the appellant's prospects of rehabilitation, saying it was for the Parole Board to assess his determination to re-enter society usefully and clear of drugs.[8] The Judge did however adopt a six-month discount to take account of the 10 months the appellant had spent on electronically-monitored bail.[9]

[16] The Judge therefore imposed an end sentence of 13 years' imprisonment on the methamphetamine charges, with a concurrent sentence of six months' imprisonment on the threatening to kill charge.[10]

Grounds of appeal

[17] In summary, the appellant argues:

(a) The quantum of methamphetamine which the Judge found had been supplied by the appellant, 2.4 kilograms, was too high. The finding was made on the basis of inferences which may be unsafe.

(b) The starting point of 15 years' imprisonment was too high. The appellant's role should properly be described as "significant" with facets of "lesser", as per the description of roles in *Zhang*. In setting

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5 At [10].
6 At [18].
7 At [21].
8 At [25].
9 At [27].
10 At [28]–[29].

the starting point, the Judge wrongly viewed the appellant as playing a "leading" role. Given the more limited role actually played by him (compared to that of his co-defendant), the starting point was too high.

(c) The discount for guilty pleas was insufficient. The Judge took an unduly critical view of the prospects of success in relation to the disputed facts hearing. The appellant's decision to challenge the quantum of methamphetamine supplied should not count against him provided his position was reasonable. The dispute did not detract from the appellant's acceptance of responsibility for his offending and did not require significant police or court resources to resolve.

(d) A discount should have been given for addiction as impaired capacity to make decisions mitigates culpability. The Judge gave insufficient weight to material which he said was based on "self-reporting". The question of causation is now settled law following the decision of *Berkland v R*.[11]

(e) A discount for prospects of rehabilitation was available. The Judge erroneously took the view that because a long-term sentence was inevitable, matters such as the appellant's prospects for rehabilitation should properly be considered by the Parole Board and that no credit could be given at sentencing. However, a long-term sentence does not necessarily preclude a discount for the prospects of rehabilitation.

Quantum of methamphetamine

[18] The Judge took as a reference point the text message from the appellant to Mr Tuhaka, one of his suppliers, dated 3 September 2017, that he was able to sell an ounce of methamphetamine (28 grams) every two to three days. Conservatively adopting a three-day period rather than a two-day period, the total supplied by the appellant over the eight-and-a-half-month period was therefore 2.4 kilograms. If a two-day period was adopted, the total supplied would have been 3.6 kilograms.

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11 *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509.

[19] The appellant's counsel submits that there is an appreciable danger that the appellant was boasting of the amount he supplied, and the quantum is somewhat lower. Counsel submits there are a number of other text messages or conversations from which alternative inferences of the amounts supplied could be drawn. These included 10 grams every two days, or a quarter ounce (seven grams) every day. These could have led to quantum findings of 1.275 kilograms or 1.785 kilograms, rather than 2.4 kilograms. Counsel submits that the Judge should have drawn the most favourable inference available of 10 grams every two days.

[20] These were, however, single text messages or conversations. The Judge recognised the danger of relying on one text message or conversation. He stated:[12]

> [26] I accept Mr Tuck's submission that if the Crown submission is based solely upon an application of [the] 3 September 2017 text messages across a nine month period that would be insufficient for me to be satisfied beyond reasonable doubt that the quantity of 2.4 kilograms had been proved as an aggravating factor.
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> [27] However the Crown submission is not limited in that way and is based upon a much broader range of evidence.

[21] The Judge therefore looked at the entirety of the evidence, including all the text messages and conversations as well as the visual surveillance undertaken. He concluded:

> [68] … I am satisfied that the total text messaging and intercepted communications substantiate that level of dealing across the date range in the charges. They support the representation by [the appellant] to Mr Tuhaka on 3 September 2017.

[22] In support of the Judge's conclusion the Crown refers to multiple exchanges between the appellant and Mr Tuhaka, who was not the appellant's only supplier. For example, an analysis of text messages exchanged with Mr Tuhaka over a week-long period between 13 March 2017 and 20 March 2017 suggests that during that time the appellant disposed of between eight and 10 ounces (224–280 grams).

[23] In a text message dated 10 April 2017, another supplier, Mr Iopata, remarked on the rate of sales to the appellant as "slow as" when the appellant had requested at

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12 *R v Wright* [2020] NZDC 24922 [Disputed Facts Hearing].

least 14 grams over three days (which is roughly equivalent to the 10 grams over two days rate relied upon by the appellant). The inference can be drawn that this was slower ("slow as") than the normal rate of trade.

[24] From text messages between 31 May 2017 and 2 June 2017 between the appellant and Mr Tuhaka, the Crown suggests that it may be inferred that the appellant disposed of an ounce from Mr Tuhaka within one day. Then, text messages between 5 and 6 September 2017 suggest that the appellant's rate of supply exceeded the 10 grams per two days estimate. An inference may be drawn that he obtained at least 10 grams and then sought two more resupplies in less than two days.

[25] The Judge also referred to intercepted communications between the appellant and his suppliers including Mr Tuhaka, Mr Burgess, and Mr Beard. The Judge found there was evidence of quantities including grams and ounces and requests for resupplies and top-ups, indicative of regular and substantial dealing well beyond what Mr Tuck would concede.[13]

[26] The Judge also considered the visual surveillance evidence given at the disputed facts hearing to be of real significance.[14] As an example, on 14 November 2017 between 6:00 am and 11:40 pm, of the 24 persons visiting the "shop", the police identified 19 as drug purchasers. Eleven stayed less than a minute, five stayed between one and two minutes, and three for less than five minutes.[15] Of significance was that there were no text messages which related to the drug dealing activities observed by the police on that day. The lack of supporting text messages was said to support an inference of a consistently regular trade with a number of repeat drug customers.

[27] The suggestion that the appellant may have been boasting was also made at the disputed facts hearing. The Judge said:

> [55] Mr Tuck raised in submission the suggestion that Mr Wright's statement to Mr Tuhaka may be boasting. I do not accept that.
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> [56] Mr Tuhaka and Mr Wright were in business together. Neither had any reason to boast or impress the other within their commercial relationship.

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13 At [42].
14 At [52].
15 At [47].

> On the contrary both were interested in the reality of the business each were conducting and in determining how they could best carry that out. I consider the communications between Mr Wright and Mr Tuhaka and the communications between Mr Wright and others to be business communications devoid of bravado or boasting.

[28] Having reviewed all the material before the Judge, we are not persuaded that the Judge was wrong to sentence the appellant on the basis that the amount of methamphetamine possessed for supply, offered to supply or actually supplied by the appellant, over an eight-and-a-half-month period, was 2.4 kilograms.

Starting point

[29] Having found that the appellant supplied 2.4 kilograms of methamphetamine, which fell within band 5 of *Zhang* (more than two kilograms), the Judge then had to consider the role played by the appellant to determine where he should be placed in the range of 10 years' to life imprisonment.

[30] The Judge accepted that many of the criteria set out by the Court in *Zhang* as constituting indicia of a "leading" role in the operation applied to the appellant. The Crown had specified these as follows:

(a) the appellant directed the buying and selling of methamphetamine at a commercial level;

(b) he had substantial links to, and influence on, others in the chain and in particular those working for him;

(c) he had close links to the original source of methamphetamine; and

(d) he had an expectation of substantial financial gain, albeit that some of it was passed up the chain to Mr Iopata.

[31] The Judge stated that the appellant's placement within band 5 on quantity, coupled with an upward adjustment for his leading role, fully justified the Crown's suggested starting point of 15 years' imprisonment.

[32] The appellant's counsel submits that his role could be accurately described as "significant" rather than "leading" in terms of description of roles in *R v Zhang*. Counsel points to the Judge's description of the appellant's role in his decision on the disputed facts hearing:

> [15] The Crown case is that Mr Wright was managing the shop on behalf of Mr Jason Iopata who the Crown say is the ultimate beneficiary of the profit made under Mr Wright's management.
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> [16] In addition to Mr Tuhaka, the Crown says that Mr Wright was able to obtain supplies of methamphetamine from various other people as and when it was needed. [Counsel for the Crown] submits that he had a regular and constant supply of methamphetamine and that the text messaging, the intercepted communications and the surveillance of the property over a two month period establishes a constant pattern of selling drugs from the ["shop"].

[33] Counsel submits that, taking the Crown case at its highest, although it was accepted that the appellant had some awareness of the supply chain and played a managerial function, he was operating under direction and was not the ultimate beneficiary of any commercial profit. Counsel compares the appellant's role to that of Mr Berkland, whose role in another operation was described by this Court as follows:[16]

> [51] [Mr Berkland] performed operations and management functions. He was responsible for counting, safe keeping and concealment of the money. He was the go-to person after Mr Blance. He was the person who came with the money to purchase the major supplies and by his own admission had conducted major deals on his own. Contrary to a submission made by Ms Ord, we do not dismiss that admission as puffery and idle boasting. The trust Mr Blance placed in Mr Berkland was such that it is perfectly conceivable Mr Blance would have been willing to sanction Mr Berkland doing that. That is not to say, that either man would have regarded the money as solely belonging to Mr Berkland.
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> …
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> [53] Mr Berkland was motivated primarily by financial advantage. He expected to profit and did profit. Whether there was or was not a nest egg does not matter for present purposes. What matters is that Mr Berkland genuinely thought there was. ...
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> [54] In any event, in addition to the promised reward of a $100,000 nest egg, there were weekly payments by way of methamphetamine (worth over $4,000 to Mr Berkland) and cash of between $1,000 to $2,000.

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16 *Berkland v R*, above n 11, at [57] quoting *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648.

> [55] Mr Berkland was conversant with the detail of the operation and its scale. The intercepted communications between him and Mr Blance as well as his statements to the undercover police show an intimate knowledge. He talked to the officers about such matters as the operation's preference for purchasing rock methamphetamine, its sale tactics, and money laundering ideas. He conferred with Mr Blance about deals and stocks. He knew Mr Blance's availability, the state of the stocks, and when 'reloading' was going to happen. Mr Berkland may not have been a frequent visitor to Coates Street but the two men must have been in frequent communications.

[34] On appeal, the Supreme Court considered that Mr Berkland should properly have been located in the mid-range of the "significant" category.[17] Counsel submits that the appellant's role may similarly be considered to fall into the "significant" category.

[35] What is most noteworthy to us, however, is that the appellant was beholden to no-one. While Mr Iopata may have been taking a portion of the shop's profits, the intercepted communications between him and the appellant do not suggest the appellant took orders from Mr Iopata. Rather, they read as dealings between two business associates. Moreover, the appellant also had other wholesale suppliers who he dealt with at the same time as Mr Iopata.

[36] In sentencing the appellant's co-offenders, Judge Mabey referred to the appellant as "the principal operator" who "direct[ed]" those below him.[18] This is consistent with intercepted communications in which the appellant told Mr Burgess he was the "boss" and agreed that Mr Burgess was his second-in-command. Intercepted communications between the appellant and Mr Higson also indicate Mr Burgess acted on instructions from the appellant. Apart from Mr Burgess and Mr Higson, four other persons, including his partner, assisted the appellant in sourcing methamphetamine from different suppliers, breaking it down and on-selling it from his address.

[37] The appellant was also often in daily contact with wholesale suppliers up the chain such as Mr Tuhaka and Mr Iopata. In effect he ran the shop, frequently sourcing quantities of methamphetamine to ensure that the shop was able to supply

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17 At [80].
18 *R v Higson* [2021] NZDC 1995 at [3] and [5].

methamphetamine to all and sundry who turned up, often without appointment or notification, wanting the drug.

[38] The appellant clearly ran the shop in the expectation of substantial financial gain. At the disputed facts hearing, an experienced police officer estimated the street value of 2.4 kilograms of methamphetamine to be $760,000 to $930,000. The appellant confirmed his offending was financially motivated when he told the PAC report writer "dealing methamphetamine was a quick and easy answer to paying bills that were beginning to stack up" when he lost his employment.

[39] We do not accept that the appellant's role can be seen as truly similar to that of Mr Berkland. The Supreme Court described Mr Berkland as having "no executive discretion", that "he did as he was told and no more",[19] did not have any "genuine operational autonomy or managerial functions", was more than "a mere step below the leader", was a "highly trusted 'gofer'", performed functions under "close supervision",[20] and was only privy to some of the leader's strategic decision-making.[21] As set out above, the appellant had much more autonomy, frequently making his own strategic and commercial decisions to juggle wholesale and on-supply and was not acting on the orders of a superior.

[40] We are therefore of the view that the 15-year starting point is within range, given the amount of methamphetamine supplied by the appellant and his leading role in the retail sales operation.

Discount for guilty pleas

[41] On sentencing, the Judge gave the appellant a 10 per cent discount for his guilty pleas. More was not available because after the guilty pleas were entered, he attempted to "limit liability in an unrealistic and completely untenable way".[22]

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19 *Berkland v R*, above n 11, at [74].
20 At [76].
21 At [73].
22 Sentencing notes, above n 1, at [18].

[42] The appellant's counsel submits that the appellant's dispute as to quantum was appropriately raised and that a 20 per cent credit for guilty pleas should have been available notwithstanding the outcome of the disputed facts exercise. Counsel notes that:

(a) the dispute as to quantum was valid;

(b) there was no excessive delay as the appellant was sentenced on the same day as a co-offender who received a 20 per cent credit for guilty pleas;

(c) the disputed facts hearing took one and a half hours. The Judge delivered a decision the next day. Therefore, substantial court resources were not needed; and

(d) only two witnesses were called to give oral evidence — they were both police officers, meaning that no civilian witnesses were required to give evidence.

[43] The appellant did not, however, plead guilty at the earliest possible time. He was initially charged in March 2018. He offered to plead guilty in June 2020, over two years later. The trial had, in fact, been set down for hearing in June 2020, but had been adjourned earlier in the year because of the COVID-19 pandemic and the suspension of jury trials.

[44] The defence position that the Crown was only able to prove the supply of 215 grams because that was the sum total of the specific quantities mentioned in the text messages and intercepted communications was also quite unrealistic. That ignored the months of police surveillance evidence, which disclosed a myriad of people coming day and night to purchase drugs, and a significant quantity of text messages in which the appellant was clearly engaged in drug deals, but a specific quantity was not mentioned.

[45] While the disputed facts hearing took only an hour and a half, it required the Judge to commit a significant amount of time to traverse a large volume of text messages and intercepted communications, as well as draft a 70-paragraph reserved decision.

[46] This Court has recognised that "[i]t is settled that the appropriateness and extent of a guilty plea discount may be influenced by a disputed facts hearing".[23] Where a "defendant adopts an unreasonable stance, propounding a view of the facts the s 24 judge completely or largely rejects, then a sentencing judge should re-evaluate whether the standard guilty plea discount remains appropriate".[24]

[47] In sentencing the appellant, the Judge acknowledged that he had consistently given others charged in the same police operation guilty plea credits of 20 per cent notwithstanding the timing of their pleas.[25] However, the Judge re-evaluated whether the standard guilty plea discount remained appropriate for the appellant in terms of the Court's comments in *Hessell*.[26] The Judge commented that the disputed facts hearing "was doomed to failure from the outset".[27] In those circumstances, the appellant has not shown that the Judge fell into error in giving the appellant only 10 per cent discount.

Addiction

[48] The Judge did not give the appellant a discount for his own use of methamphetamine on the basis that it did not contribute in any material way to the offending. He stated:

> [22] The facts, as determined by me at the sentence indication hearing and as originally set out in the summary of facts, point to a retail drug operation operated from a house managed by Mr Wright with the assistance of others living there. He was in charge, it was all about making money and whilst Mr Wright was a user of drugs it cannot possibly be that such a high level of trading was all about feeding an addiction. This was commercial. This was about profit. This was about disseminating methamphetamine into a

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23 *Nathan v R* [2011] NZCA 284 at [28].
24 *Hessell v R* [2009] NZCA 450, [2010] 2 NZLR 298 at [47]. See also *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [61]–[62].
25 Sentencing notes, above n 1, at [12].
26 At [14]–[17].
27 At [13].

> community that could least afford it and which was harmed by it. This is not a situation which applies to those that are driven to trade drugs to feed a habit.

[49] The appellant's counsel argued that an inference was available on the evidence that the appellant's ability to exercise rational choice was materially diminished by his addiction, thus diminishing his culpability, and justifying a discounted final sentence. Counsel submits a discrete discount in the vicinity of 15 per cent may be available.

[50] Evidence of the appellant's use of methamphetamine can be found in his s 27 report, the PAC report and a report from a drug and alcohol assessor.

[51] The s 27 report discloses that the appellant first started smoking methamphetamine in 2000, when he was 20 years old. Between the ages of 20 to 30 his use was controlled in that he would smoke the drug once a month. Over the time that the appellant worked at the Kawerau Mill his income increased and so did his methamphetamine use. His weekend use stretched to weekdays. He said his heaviest period of use was in 2017, after he lost his employment at the end of 2016. When he lost his employment, he started selling methamphetamine for a Mongrel Mob member who he knew through pig hunting. This man gave him an amount to "get rid of".

[52] The appellant knew he was using too much when his partner told him he was. He knew he was smoking more than he intended to and more than he was acknowledging. He was selling enough to pay the bills and he was also buying more so that he could smoke the rest. He and his partner did not access Work and Income support despite their financial troubles.

[53] The appellant thought he was managing himself and his use well because he was making sure he would eat and sleep. He says that he has never used methamphetamine in front of his children and neither have his associates.

[54] The appellant has had a number of short periods of abstinence. The longest of these periods was almost a year.

[55] The PAC report discloses that after he lost his employment at the end of 2016, the appellant searched for other employment for three months and eventually became

discouraged with his inability to secure any job and the lack of options available to him. The appellant stated that dealing methamphetamine was a quick and easy way to pay bills that were beginning to stack up. He began dealing in small quantities of methamphetamine. However, this gradually increased along with his personal use of methamphetamine.

[56] The report from the drug and alcohol assessor is reliant on the appellant's self-reporting. The report confirms the appellant's use of methamphetamine from age 20. He would smoke about a quarter of a gram on pay day once a week. The pattern continued until 2016, when he lost his job for fighting with a work colleague. He thought he would make money selling methamphetamine. As a result, he had more access to methamphetamine, he started smoking more and his methamphetamine use increased to about two grams a day.

[57] The report notes that the appellant has attempted to stop using methamphetamine four times. Three of those times were for about six weeks and another time he stopped using methamphetamine for one year without any support.

[58] We agree with appellant's counsel that there is no blanket rule that a discount for addiction will never be warranted in a case involving commercial drug dealing. In *Berkland v R*, the Supreme Court did, however, affirm the Court of Appeal's "discomfort" in *Zhang* with "allowing meaningful discounts for addiction where the offender still had the wherewithal to lead a commercial drug business or play a significant role in it".[28]

[59] The Supreme Court recognised that "[t]he causative contribution of background may … be displaced, in whole or in part, where the offending is particularly serious".[29] And:[30]

> … the more serious and carefully orchestrated the offending, the more the courts are likely to emphasise the choice made by the offender to offend. The causative contribution of background factors will be reduced and other sentencing purposes will be more prominent, particularly protecting the community from the harm associated with drug dealing.

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28 *Berkland v R*, above n 11, at [128].
29 At [111].
30 At [16(c)].

[60] In the present case, there was a correlation between the appellant losing his employment, his decision to sell methamphetamine and his increased consumption of the drug. But correlation does not establish causation. We have set out at some length the available evidence relating to the appellant's use of methamphetamine to record the background to the Judge's finding that the appellant's addiction did not contribute in any material way to the offending.

[61] The appellant had used methamphetamine for 16 years prior to losing his employment for an unrelated reason. He had periods of abstinence. His bills were mounting up, but he chose not to access Work and Income support. Instead, he saw dealing in methamphetamine as a quick and easy way to pay bills. He received an amount of methamphetamine from a Mongrel Mob member to get rid of. His personal use of methamphetamine increased as he began dealing in larger amounts of methamphetamine.

[62] In those circumstances, the appellant has not shown that the Judge fell into error in declining to give him a discount for his addiction.

Rehabilitation

[63] Finally, the Judge declined to give any discount for prospects of rehabilitation. The Judge stated:

> [25] Mr Tuck wishes me to give some credit for prospects of rehabilitation, referring to the fact that Mr Wright has parental support and the support of others. That is true. He has expressed a desire to be free of methamphetamine and comments to the PAC report writer that he has never felt better having been clean of drugs and got back into physical activity, typical of when he was a fine young sportsman. However, that is all a matter for the Parole Board. They will assess his determination to re-enter society usefully and clear of drugs. Every opportunity will be given to Mr Wright in prison to prove his point. But I can give no credit at this stage.

[64] The appellant's counsel submits that a long-term sentence does not necessarily preclude a discount for the prospects of rehabilitation and the Judge was wrong not to recognise the support he had from his parents and others to become drug and alcohol free.

[65] The appellant had, however, not undertaken any drug or alcohol related therapy, courses, or rehabilitation prior to his incarceration in 2020. The appellant was arrested in 2017. He was in custody on remand for about nine months before he was released on bail. After about six weeks he went back to smoking one gram of methamphetamine a day, breached his bail conditions and went back to prison for four months. The appellant was again released on bail and said he was smoking methamphetamine about every other week, sometimes every week, between a quarter to half a gram. He said it was hard to get methamphetamine at that time and he did not have much money. He breached bail again and was remanded in custody until sentencing. It was only then that he began to consider undertaking courses in prison.

[66] Although he has now expressed an interest in the Drug Treatment Unit (DTU) in prison and a residential alcohol and other drug treatment programme, such as Moana House, the Judge has not been shown to be in error in declining a discount for the appellant's prospects of rehabilitation. The appellant did not take advantage of his time on bail to investigate or commence rehabilitation while in the community. At the time of sentencing his prospects of rehabilitation were quite unknown.

Result

[67] The appeal against sentence is dismissed.

Solicitors:
Crown Law Office | Te Tari Ture o te Karauna, Wellington for Respondent